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UNITED STATES OF AMERICA

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

GABRIEL GONZALEZ,

Defendant.

No. CR 04-1189(A)-CAS

UNITED STATES' OPPOSITION TO
DEFENDANT'S MOTION FOR
MODIFICATION OF SUPERVISED RELEASE
CONDITION

Plaintiff United States of America, by and through its counsel of record, the United States Attorney for the Central District of California and Assistant United States Attorney Karen I. Meyer, hereby files this opposition to defendant's motion for modification of supervised release condition.

1 This opposition is based upon the attached memorandum of points
2 and authorities, the files and records in this case, and such further
3 evidence and argument as the Court may permit.

4 Dated: August 29, 2022

Respectfully submitted,

5 STEPHANIE S. CHRISTENSEN
6 Acting United States Attorney

7 SCOTT M. GARRINGER
8 Assistant United States Attorney
9 Chief, Criminal Division

10 /s/
11 KAREN I. MEYER
12 Assistant United States Attorney

13 Attorneys for Plaintiff
14 UNITED STATES OF AMERICA
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION AND BACKGROUND**

3 Defendant used his badge and former position as a law
4 enforcement officer to harass, molest, rape, and obtain sexual favors
5 from vulnerable women who complied with defendant's orders out of
6 fear. In 2006, defendant went to trial and was convicted on all
7 three counts of the Amended First Superseding Indictment of violating
8 18 U.S.C. § 242. This Court sentenced defendant to 360 months'
9 imprisonment and five years supervised release. (CR 117.) As one of
10 the conditions of supervised release, this Court imposed a
11 requirement that defendant "register with the state sex offender
12 registration agency in any state where the defendant resides, is
13 employed, carries on a vocation, or is a student, as directed by the
14 Probation Officer." (CR 118.)

15 Defendant is incarcerated at FCI-Forrest City Low in Forrest
16 City, Arkansas. His projected release date is September 17, 2031.

17 On July 25, 2022, defendant filed a Motion for Modification of
18 Supervised Release Condition (CR 247) ("Mot."), in which he asks this
19 Court to remove the condition requiring him to register as a sex
20 offender while on supervised release, arguing that this condition is
21 illegal. Because this registration condition is not illegal,
22 defendant's request should be denied.

23 **II. ARGUMENT**

24 **A. Defendant's Registration Condition Is Not Illegal**

25 Defendant's sex offender registration condition is not illegal
26 under the Third Circuit's decision in United States v. Icker, 13
27 F.4th 321 (3d Cir. 2021), as defendant states, (Mot. at 4), because
28 this Court did not require defendant to register under the federal

1 Sex Offender Registration and Notification Act ("SORNA") statute. In
2 Icker, defendant was also a law enforcement officer who used his
3 badge to force women under color of law to submit to his acts of
4 sexual molestation and to his sexual demands. Id. at 323. The
5 district court mandated that as a condition of supervised release,
6 defendant had to comply with SORNA as directed by the probation
7 officer, the Bureau of Prisons, or any state sex offender
8 registration agency where he resided, worked, or was a student. Id.
9 The Third Circuit held that a district court could not order as a
10 matter of discretion a defendant to register under SORNA where
11 defendant had not been convicted of a "sex offense," and because 18
12 U.S.C. § 242 was not a qualifying sex offense under the SORNA
13 statute, imposition of such a condition constituted plain error. Id.
14 The Third Circuit also reasoned that allowing the district court to
15 impose such a condition impermissibly broadened the SORNA statute and
16 its application. Id. at 329 ("the plain language of SORNA does not
17 anticipate any discretionary application of its requirements").

18 That is not the condition that the Court imposed in this case.
19 Here, this Court required defendant to "register with the state sex
20 offender registration agency in any state where the defendant
21 resides, is employed, carries on a vocation, or is a student, as
22 directed by the Probation Officer." (CR 118.) Thus, this Court did
23 not order defendant to comply with SORNA, and therefore, was not
24 bound by SORNA's statutory language defining a "sex offense."

25 **B. Even Assuming Arguendo the Condition was Illegal, Section**
26 **3583(a)(2) Does Not Authorize a District Court to Modify a**
Supervised Release Condition for Illegality

27 Even assuming arguendo this Court's registration condition was
28 illegal, 18 U.S.C. § 3583(e)(2) does not authorize a district court

1 to modify conditions of supervised release based on illegality. As
2 the language of 18 U.S.C. § 3583(e)(2) specifies, the court may
3 modify, reduce, or enlarge the conditions of supervised release at
4 any time prior to the expiration or termination of the term of
5 supervised release "after considering the factors set forth in
6 section 3553(a)(1), (a)(2)(B), (a)(2)(C), (a)(2)(D), (a)(4), (a)(5),
7 (a)(6), and (a)(7)." The Ninth Circuit in United States v. Gross,
8 307 F.3d 1043 (9th Cir. 2002) agreed with the district court's
9 determination that "under 18 U.S.C. § 3583(e)(2), it had authority to
10 modify [supervised release] conditions upon consideration of certain
11 statutorily enumerated factors, but not the factor of illegality."
12 Gross, 307 F.3d at 1044. The Ninth Circuit noted that the list under
13 Section 3553(a) included "the nature and circumstances of the
14 offense, the need for deterrence, the need to protect the public, the
15 need to provide defendant with training or medical care, and the
16 relevant provisions of the Sentencing Guidelines," but that
17 "[c]onspicuously absent from this list of relevant factors is
18 illegality." Id. (emphasis added). Thus, illegality is not a proper
19 ground for modification and any interpretation authorizing Section
20 3583(e)(2) to modify or rescind an allegedly illegal supervised
21 release condition would frustrate congressional intent. Id. See
22 also United States v. Cate, 971 F.3d 1054, 1058 (9th Cir. 2020)
23 (citing Gross with approval). Instead, defendant may challenge the
24 legality of a supervised release condition only in the following
25 ways: (1) on direct appeal; (2) by filing a collateral Section 2255
26 habeas corpus petition; or (3) by filing a Rule 35 motion, (id.), none
27 of which defendant did here.

1 **III. CONCLUSION**

2 This Court should deny defendant's motion because the supervised
3 release condition requiring defendant to register as a sex offender
4 pursuant to a state sex offender registration agency is a valid
5 condition.